

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTINA GAVIN,
Plaintiff,

-v-

CITY OF NEW YORK, *et al.*,
Defendants.

20-CV-8163 (JPO)

ORDER

J. PAUL OETKEN, District Judge:

By opinion and order dated August 24, 2021, this Court dismissed Plaintiff's fair trial claim, concluding that an adjournment in contemplation of dismissal (ACD) is not a "favorable termination" of criminal proceedings for purposes of a fair trial claim. (Dkt. No. 36 at 5-6.) On August 20, 2021, however, the Second Circuit held that an ACD *is* a favorable termination in the relevant sense for purposes of a fair trial claim. *See Smalls v. Collins*, --- F.4th ---, 2021 WL 3700194, at *15-17 (2d Cir. Aug. 20, 2021).

In light of the Second Circuit's clarification of the law, the Court hereby withdraws Section II.A of its August 24, 2021 opinion. As discussed during the telephone conference held on August 30, 2021, upon reconsideration, Defendants' motion to dismiss is DENIED as to Plaintiff's fair trial claim. Defendants shall file answers to all of Plaintiff's claims on or before September 21, 2021.

SO ORDERED.

Dated: August 30, 2021
New York, New York



J. PAUL OETKEN
United States District Judge